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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re I.R. et al., Persons Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

EMMA C. et al.,

Defendants and Appellants.

D053861

(Super. Ct. No. NJ13978A-B)

APPEAL from judgments of the Superior Court of San Diego County, Harry M.
Elias, Judge. Affirmed.

Emma C. and Isidro V. (together, the parents) appeal judgments declaring their
minor children I.R. and Carolina V. (together, the minors)¹ dependents of the juvenile

¹ Isidro is the presumed father of Carolina. I.R.'s alleged father was not located, did not appear and has not appealed.

court under Welfare and Institutions Code² section 300, subdivision (b), and removing them from parental custody. The parents challenge the sufficiency of the evidence to support the court's jurisdictional findings and dispositional orders. We affirm the judgments.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2008 the San Diego County Health and Human Services Agency (Agency) filed petitions in the juvenile court under section 300, subdivisions (b) and (j)³ alleging seven-year-old I.R. and four-year-old Carolina were at substantial risk of harm because their mother, Emma, had a history of substance abuse and violated the terms of her voluntary services agreement by failing to attend substance abuse treatment and leaving the country with the minors. The court detained the minors in out-of-home care and ordered Agency to evaluate all appropriate relative homes.

Emma admitted she had been using methamphetamine for nine years (since she was 17 years old). She reported using crystal methamphetamine one to three times a month while caring for the minors. Emma admitted she and Isidro smoked crystal methamphetamine in the home and Isidro also used heroin in the home. Emma's drug use interfered with her ability to maintain a clean home, obtain proper medical care for I.R.'s

² Statutory references are to the Welfare and Institutions Code.

³ The petition originally alleged Carolina tested presumptively positive for methamphetamine, but when the test was ultimately negative, the court dismissed a second count under section 300, subdivision (b) and a count as to I.R. under section 300, subdivision (j).

severe eczema and take I.R. to school. Emma left the minors alone at home, where there were drugs, pipes and needles. The minors said they saw needles and watched the parents inject drugs. Carolina said she witnessed domestic violence between her parents and also reported Isidro hit her and I.R. with a belt.

Emma had a voluntary services contract with Agency in 2003, but did not comply with it. Agency again offered her a voluntary services contract in May 2008. Less than two months later, Emma violated the terms of the contract when she missed several drug treatment sessions because she took the minors to Mexico to visit Isidro.

Agency agreed to evaluate the home of the maternal grandmother who, along with a maternal uncle and a paternal aunt, had been fingerprinted as part of a criminal background check. Results of the maternal grandmother's home evaluation were pending.

At a contested jurisdiction and disposition hearing, Emma testified she had been in drug treatment for four months and attended Alcoholics Anonymous (AA) meetings. She lived with Isidro and wanted the minors placed with her.

The social worker testified the minors were at risk because of Emma's history of substance abuse and her previous failure to follow through with drug treatment. The parents were living together and Isidro recently began a substance abuse program. Emma was participating in individual and group counseling. Both parents were complying with the substance abuse component of their service plans.

The minors did not want to return home because Isidro was living there. Carolina said she would live with Emma if Isidro were not there. In the social worker's opinion, it

was detrimental to the minors to live with both parents because the parents used drugs together and engaged in domestic violence. The social worker believed the minors could not safely be returned to the parents' custody because the parents had not had sufficient time to participate in their respective programs.

After considering the evidence and hearing argument of counsel, the court sustained the allegations of the petitions under section 300, subdivision (b), declared the minors dependents and removed them from parental custody under section 361, subdivision (c)(1). The court placed the minors in licensed foster care, gave Agency discretion to place them with a relative and set a hearing on the issue of relative placement in five days.

DISCUSSION

I

Emma challenges the sufficiency of the evidence to support the court's jurisdictional findings. She asserts that at the time of the hearing, the minors were not subject to the defined risk of harm because she was cooperating with Agency, participating in drug treatment and testing negative for drugs. Isidro joins in this argument.

A

In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court's findings. We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence, or weigh the evidence. Rather, we draw all reasonable inferences in support of

the findings, view the record favorably to the juvenile court's order and affirm the order even if other evidence supports a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child or provide adequate medical treatment. In enacting section 300, the Legislature intended to protect children who are currently being abused or neglected, "and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.) The Legislature has emphasized that a child's well-being depends on a "home environment free from the negative effects of substance abuse" (*Ibid.*) In this regard, the court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194-196.)

The court may consider past events when determining whether a child presently needs the juvenile court's protection. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135, disapproved on another ground in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 749, fn. 6.) A parent's past conduct is a good predictor of future behavior. (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169.)

B

Here, the evidence showed Emma had a nine-year history of methamphetamine abuse and Isidro was an intravenous heroin user. The minors were aware of the parents' drug use in the home, having seen them use needles to inject themselves. As a result of Emma's substance abuse, she neglected the minors by leaving them alone at home, failing to take I.R. to school and failing to get proper medical attention for her. Emma was unsuccessful in addressing her substance abuse when given the opportunity to do so through a voluntary services contract. Although the parents were participating in drug treatment at the time of the jurisdiction hearing, this was just the beginning of their journey to recovery. (See *In re Clifton B.* (2000) 81 Cal.App.4th 415, 423-424 [200 days of sobriety was insufficient period to show parent no longer posed risk to minor].) Thus, substantial evidence supports the court's jurisdictional findings the minors were currently at risk of harm as a result of the parents' substance abuse.

II

Emma challenges the sufficiency of the evidence to support the court's dispositional orders. She asserts there was no evidence that removing the minors from her custody was necessary to protect them from harm. She further asserts the court should have considered disposition alternatives less drastic than removal. Isidro joins in this argument.

A

Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, the child would be at substantial risk of

harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) The jurisdictional findings are prima facie evidence the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*In re Diamond H., supra*, 82 Cal.App.4th at p. 1136.)

In determining whether removal is warranted, the court may consider the parent's past conduct as well as present circumstances. (*In re S.O.* (2002) 103 Cal.App.4th 453, 461.) We review the court's dispositional findings for substantial evidence. (*In re Kristin H., supra*, 46 Cal.App.4th at p. 1654.)

B

Here, the court removed the minors because the evidence showed Emma's methamphetamine abuse negatively impacted her ability to properly parent her children. Emma exposed the minors to her drug use and created a home environment in which the minors had access to drugs and drug paraphernalia. Although Emma was beginning to address her chronic drug use, she had previously failed to cooperate with Agency when offered a voluntary services contract, and the period of her sobriety was not "substantial" in relation to the length of her addiction and her drug of choice. Emma chose to live with Isidro despite knowing the minors did not want to live with him because they had witnessed domestic violence and had been physically disciplined by Isidro. The minors remained at risk in Emma's care unless she participated in services to address issues of

domestic violence and to learn proper parenting and how to protect the minors. Thus, allowing the minors to remain in Emma's custody was not a safe option for them. (See *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288.) Substantial evidence supports the court's finding the minors were at substantial risk of harm if returned home.

Emma asserts the court should have considered placing the minors with her, conditioned on her living with maternal relatives or requiring Isidro to leave the home. However, Emma's substance abuse needs to be addressed before she can safely care for the minors, even under stringent conditions of supervision. Emma did not comply with voluntary services contracts on two previous occasions and the court had no reason to believe she would now be capable of caring for the minors while following through with her recovery. From this evidence, the court could reasonably find returning the minors to Emma's custody was not a feasible alternative.⁴

⁴ In his opening brief, Isidro argued the court erred by failing to place the minors with a relative and failing to state reasons for not doing so. Isidro now informs us he has abandoned this issue as moot.

DISPOSITION

The judgments are affirmed.

BENKE, Acting P. J.

WE CONCUR:

McDONALD, J.

AARON, J.